To:	Fresh Faced Skin Care, LLC (robert@axenfeldlaw.com)
Subject:	U.S. Trademark Application Serial No. 88471689 - FRESH FACED SKIN CARE - N/A - Request for Reconsideration Denied - Return to TTAB
Sent:	March 15, 2021 04:17:12 PM
Sent As:	ecom123@uspto.gov
Attachments:	Attachment - 1 Attachment - 2 Attachment - 3 Attachment - 4 Attachment - 5 Attachment - 6 Attachment - 7 Attachment - 8 Attachment - 9 Attachment - 10 Attachment - 11 Attachment - 12 Attachment - 13 Attachment - 14 Attachment - 15 Attachment - 16 Attachment - 17 Attachment - 18 Attachment - 19 Attachment - 20 Attachment - 21 Attachment - 22 Attachment - 23 Attachment - 24 Attachment - 25 Attachment - 26 Attachment - 27 Attachment - 28 Attachment - 29 Attachment - 30 Attachment - 31 Attachment - 32 Attachment - 33 Attachment - 34 Attachment - 35 Attachment - 36 Attachment - 37 Attachment - 38 Attachment - 39 Attachment - 40 Attachment - 41 Attachment - 42 Attachment - 43

Attachment - 44
Attachment - 45
Attachment - 46

United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application

U.S. Application
Serial No. 88471689

Mark: FRESH
FACED SKIN CARE

Correspondence
Address:
Robert R. Axenfeld
AXENFELD LAW
GROUP, LLC
P.O. BOX 3308
WEST CHESTER
PA 19381

Applicant: Fresh
Faced Skin Care, LLC

Reference/Docket No.
N/A

Correspondence
Email Address:

robert@axenfeldlaw.com

REQUEST FOR RECONSIDERATION AFTER FINAL ACTION DENIED

Issue date: **March 15, 2021**

Applicant's request for reconsideration is denied. *See* 37 C.F.R. §2.63(b)(3). The trademark examining attorney has carefully reviewed applicant's request and determined the request did not: (1) raise a new issue, (2) resolve all the outstanding issue(s), (3) provide any new or compelling evidence with regard to the outstanding issue(s), or (4) present analysis and arguments that were persuasive or shed new light on the outstanding issue(s). TMEP §§715.03(a)(ii)(B), 715.04(a).

Applicant continues to argue that the marks have different sounds, appearances, and commercial impressions. In terms of sound, the marks sound alike. There is only a slight aural distinction in the marks' pronunciations of **FRESHFACE** and **FRESH FACED** created by the "D" at the end of "**FACED**" in applicant's mark. Slight differences in the sound of similar marks will not avoid a likelihood of confusion. *In re Energy Telecomms. & Elec. Ass'n* , 222 USPQ 350, 351 (TTAB 1983); *see In re Viterra Inc.*, 671 F.3d 1358, 1367, 101 USPQ2d 1905, 1912 (Fed. Cir. 2012). As explained in the previous office action, the marks have similar commercial impressions. Consumer confusion has been held likely for marks that do not physically sound or look alike but that convey the same idea, stimulate the same mental reaction, or may have the same overall meaning. *Proctor & Gamble Co. v. Conway*, 419 F.2d 1332, 1336, 164 USPQ 301, 304 (C.C.P.A. 1970) (holding MISTER STAIN likely to be confused with MR. CLEAN on competing cleaning products); *see In re M. Serman & Co.*, 223 USPQ 52, 53 (TTAB 1984) (holding CITY WOMAN for ladies' blouses likely to be confused with CITY GIRL for a variety of female clothing); *H. Sichel Sohne, GmbH v. John Gross & Co.*, 204 USPQ 257, 260-61 (TTAB 1979) (holding BLUE NUN for wines likely to be confused with BLUE CHAPEL for the same goods); *Ralston Purina Co. v. Old Ranchers Canning Co.*, 199 USPQ 125, 128 (TTAB 1978) (holding TUNA O' THE FARM for canned chicken likely to be confused with CHICKEN OF THE SEA for canned tuna); *Downtowner Corp. v. Uptowner Inns, Inc.*, 178 USPQ 105, 109 (TTAB 1973) (holding UPTOWNER for motor inn and restaurant services likely to be confused with DOWNTOWNER for the same services); TMEP §1207.01(b).

Additionally, applicant asserts that its services are unrelated to registrant's goods. However, applicant is providing similar goods to the registrant and is providing them in connection with cosmetic skin care services. *See* attached evidence from https://www.lexico.com/en/definition/skin_cream, https://www.vanicream.com/skin-basics/skin-lotion-cream-or-ointment-how-to-choose-the-best-moisturizer, and https://www.itcosmetics.com/different-types-of-moisturizer.html. The previously attached third party evidence shows that

applicant's services and registrant's goods are related. Therefore, applicant's services are used in connection with goods similar to that of the registrant. The trademark examining attorney has attached evidence from the USPTO's X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar goods and/or services as those of both applicant and registrant in this case. This evidence shows that the goods and/or services listed therein, namely cosmetic skin care services, skin creams, cosmetics, facial cleansers, and facial moisturizers are of a kind that may emanate from a single source under a single mark. *See In re I-Coat Co.*, 126 USPQ2d 1730, 1737 (TTAB 2018) (citing *In re Infinity Broad. Corp.*, 60 USPQ2d 1214, 1217-18 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988)); TMEP §1207.01(d)(iii). Therefore, this argument is unpersuasive.

Applicant also states that there has been no actual confusion. "'[A] showing of actual confusion is not necessary to establish a likelihood of confusion.'" *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); TMEP §1207.01(d)(ii). "[T]he relevant test is *likelihood* of confusion, not *actual* confusion." *In re Detroit Athletic Co.*, 903 F.3d 1297, 1309, 128 USPQ2d 1047, 1053 (Fed. Cir. 2018) (emphasis in original). "Uncorroborated statements of no known instances of actual confusion . . . are of little evidentiary value," especially in ex parte examination. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1317, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003). Furthermore, "[g]enerally, in an ex parte proceeding a lack of evidence of actual confusion carries little weight, because the cited registrant is not a party to the proceeding and the typical contentions of the applicant's witnesses, to the effect that they are not aware of any instances of actual confusion, tell only one side of the story and are often uncorroborated." *In re FCA US LLC*, 126 USPQ2d 1214, 1225 (TTAB 2018). Self-serving testimony regarding applicant's unawareness of actual confusion is not conclusive that actual confusion does not exist or that there is no likelihood of confusion. *See In re Bissett-Berman Corp.*, 476 F.2d 640, 177 USPQ 528, 529 (CCPA 1973). Therefore, this argument is unpersuasive.

Accordingly, the following refusal **made final** in the Office action dated August 8, 2020 are **maintained and continued**:

- TRADEMARK ACT SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION WITH REGISTERED MARK

See TMEP §§715.03(a)(ii)(B), 715.04(a).

If applicant has already filed an appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

If applicant has not filed an appeal and time remains in the six-month response period, applicant has the remainder of that time to (1) file another request for reconsideration that complies with and/or overcomes any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B). Filing a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); *see* TMEP §715.03(c).

/Aubrey Biache/
Examining Attorney
Trademark Law Office 123
(571) 270-0120
aubrey.biache@uspto.gov

Definition of skin cream in English:

skin cream

NOUN

A creamy cosmetic used to care for the skin, especially of the face; chiefly as a mass noun.

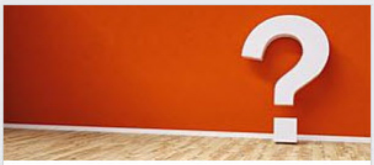
Origin
Late 19th century; earliest use found in Semi-Weekly Democrat (Olean, New York).

WORD OF THE DAY
play-play
ADJECTIVE

★ 2020 WORD OF THE YEAR ★
quarantine
SPANISH | *cuarentena*

It's here! Lexico's first Word of the Year!

Year!



Does English Have More Words Than Any Other Language?

Synonyms for Colours

Incarnadine is a shade of which colour?

- ○ red
- ○ green

NEXT 0/10

Feedback

TRENDING WORDS

Most popular in the world

1. linespeople
2. dancetté
3. abacus
4. wedgie
5. D/A

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.